IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL FROM THE EXAMINER TO THE BOARD
OF PATENT APPEALS AND INTERFERENCES

In re Application of: Kenneth D. Pool

Serial No.:   10/521,933

Filing Date: December 6, 2005

Group Art Unit: 2431

Confirmation No.:   2080

Examiner: Bryan F. Wright

Title: *Method for Controlling Access to Informational Objects*

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

<u>APPEAL BRIEF</u>

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Dear Sir:

APPEAL BRIEF

Appellant appeals to the Board of Patent Appeals and Interferences from the decision of the Examiner sent on October 20, 2008, finally rejecting Claims 1-23 and 25 of which are pending in this case. Appellant hereby is concurrently filing a Notice of Appeal.

I.   STATUS OF CLAIMS

Claims 1-23 and 25 are pending in this Application and stand rejected pursuant to the Final Rejection sent on October 20, 2008, and are all presented for appeal. Claim 24 has been previously canceled. All pending claims are shown in Appendix VI.

II.   STATUS OF AMENDMENTS

All amendments were previously entered and no new amendments were made after the recent Final Rejection of October 20, 2008.

III.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A.   Section 112 Rejection

Claim 1 stands rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Appellant respectfully defers this issue and formally asks the Board to focus solely on the pending §102 and §103 rejections.

B.   Section 102 Rejection

Claims 1, 4-9, 13-15, and 18-22 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,675,782 issued to Montague (hereinafter "*Montague*").

C.   Section 103 Rejection

The Examiner rejects Claims 10-12 under 35 U.S.C. §103(a) as being unpatentable over Montague in view of U.S. Patent No. 7,181,017 issued to Nagel (hereinafter "*Nagel*"). The Examiner also rejects Claims 2-3, 16-17, and 24-25 under 35 U.S.C. §103(a) as being unpatentable over *Montague* in view of U.S. Publication No. 2003/0191946 issued to Auer (hereinafter "*Auer*"). The Examiner further rejects Claim 23 under 35 U.S.C. §103(a) as being unpatentable over *Montague* in view of U.S. Patent No. 6,850,938 issued to Sadjadi (hereinafter "*Sadjadi*").

IV.   ARGUMENT

A.   Section 102 Rejection

Claims 1, 4-9, 13-15, and 18-22 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,675,782 issued to Montague (hereinafter "*Montague*").

In an effort to conserve the Board's resources, Appellant will only highlight some (of the multitude) of reasons why the pending claims are allowable over the cited art. Independent Claim 1 recites:

A method for regulating access to an object comprising the steps of:

for a plurality of users, allowing each user to designate the relationship characteristics between that user and any other user;

identify one of the plurality of users as an owner of the object;

determining if a selected one of the plurality of users has access to the object by determining if the relationship characteristics on at least one path between the selected one of the plurality of users and the owner of the object is a trusted relationship between each of the users on that path, wherein said path includes at least one additional user beside said owner of the object and the selected one of the plurality of users, and access to the object for the additional user is granted by the selected one, and wherein the additional user defines additional relationship characteristics that grant access to additional objects being held by the additional user.

The Examiner contends on page 19 of the Final OA that all of the underlined portions above are taught by a recitation of 'controlling access to entities' found in the Abstract of *Montague*, along with FIGURE 5 of that same reference. Specifically, that Abstract provides:

[57]   **ABSTRACT**

A method and system for controlling access to entities on a network on which a plurality of servers are installed that use different operating systems. A request is entered by a user at a workstation on the network to set access permissions to an entity on the network in regard to a trustee. In response to the request, various application programming interfaces (APIs) are called to translate the generic request to set permissions on the entity into a format appropriate for the operating system that controls the entity. Assuming that the user has the appropriate rights to set access permissions to the entity as requested, and assuming that the trustee identified by the user is among those who can have rights set to the entity, the request made by the user is granted. Entities include both "containers" and "objects." Entities are either software, such as directories (containers) and files (objects), or hardware, such as printers (objects).

<u>Rhetorically</u>: After reading this Abstract passage, how could it possibly anticipate Independent Claim 1? Independent Claim 1 defines a path and that path is between a selected one of the plurality of users and the owner of the object. Furthermore, the path also includes an additional user and ***access to the object for the additional user is in fact granted by the selected one such that there is a hierarchy***. Therefore, as outlined by Independent Claim 1, this 'selected one' is not merely a passive entity, as would be the case theoretically in *Montague*, but an element ***that is empowered to control access to the object for the additional user***.

Moreover, moving along this continuum of deficiencies of *Montague*, Independent Claim 1 continues to explain that the additional user defines additional relationship characteristics that grant access to <u>additional objects being held by the additional user</u>. There are no such capabilities in *Montague* for this additional user.

After reviewing these passages of Independent Claim 1, the Board should be envisioning three entities: the owner, the selected one, and the additional user: all of these entities being connected on a path. This is what is recited by Independent Claim 1 and, thus, is the subject of this patentability inquiry. Additionally, the Board should comprehend that access to the object for the additional user is granted by an intermediary element: namely, the selected one of the plurality of users. Moreover, <u>that additional user defines other additional relationship characteristics that grant access to additional objects that it holds</u>.

Montague fails miserably in offering anything relevant to these features. Assuredly, there is nothing in the Abstract of *Montague* for these capabilities. Again, in an effort to draw focus to this important issue, the Board can visualize two buckets of objects and at least two different entities controlling how those buckets can be accessed. Further, there is a path that connects the entities and the entities, in turn, control access to their objects.

In contrast, the *Montague* reference discloses a database configuration that is implementing generic access control lists in their architecture. Where is there anything in *Montague* allowing additional users being able to control access to additional objects? The Specification of *Montague* assigns permission to a benign component <u>that is incapable of defining further access to other objects it holds</u>. No component in the access lists of *Montague* can further define permissions for other

objects that such a component might hold. The Examiner appears to have glossed right over this/these limitation(s).

In addition, nothing in *Montague* discloses <u>how the additional user would be granted access by the selected one</u>, which in this case is not the owner of the object. These important limitations are provided for in Independent Claim 1, but no reference of record includes such elements. Appellant has reviewed *Montague* in its entirety and finds nothing that would be relevant to such operations.

Turning to Independent Claim 15, Independent Claim 15 recites:

A method for regulating access to an object, the method comprising the steps of:

identifying an object or a set of objects to which access is to be regulated;

identifying an owner that has control of the object(s);

identifying a relationship path which would otherwise be a valid path;

allowing each relationship element to specify the maximum number of subsequent elements in the path; and

classifying that relationship path as invalid if for any element in that path the number of subsequent elements in the path exceeds the limit specified by that ***element such that access to the object(s) is prohibited for all relationship elements in the path and only the owner can access the object(s).***

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Montague fails to offer any disclosure relating to "...<u>classifying that relationship path as invalid if for any element in that path the number of subsequent elements in the path exceeds the limit specified by that element such that access to the object(s) is prohibited for all relationship elements in the path and only the owner can access the object(s).</u>" For this passage, the Examiner again cites FIGURE 5 of *Montague*. Appellant is at a loss to even attack this citation because there is nothing in that FIGURE that would even be germane to the passage underlined above.

Independent Claim 15 outlines how each relationship element can specify the **maximum number of subsequent elements in the path** and then subsequently <u>denies</u> access for <u>all relationship elements when that limit is exceeded</u>. In essence, access is shutdown when the limit reaches its threshold. Once that occurs, only the owner can subsequently access the object. These important limitations are provided for in Independent Claim 15, but no reference of record includes such elements.

B. <u>Section 103 Rejection</u>

The Examiner rejects Claims 10-12 under 35 U.S.C. §103(a) as being unpatentable over Montague in view of U.S. Patent No. 7,181,017 issued to Nagel (hereinafter "*Nagel*"). The Examiner also rejects Claims 2-3, 16-17, and 24-25 under 35 U.S.C. §103(a) as being unpatentable over *Montague* in view of U.S. Publication No. 2003/0191946 issued to Auer (hereinafter "*Auer*"). The Examiner further rejects Claim 23 under 35 U.S.C. §103(a) as being unpatentable over *Montague* in view of U.S. Patent No. 6,850,938 issued to Sadjadi (hereinafter "*Sadjadi*").

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior reference (or references when combined) must teach or suggest all of the claim limitations.[1]

It is respectfully submitted that the rejected claims are patentable over the art of record based on at least the third criterion of obviousness: none of the references alone or in combination teach, suggest, or disclose each claim limitation of the Independent Claims. For example, with respect to Independent Claim 23, no reference of record provides for "*…allowing or disallowing the specified access to the object(s) based on the entity relationship(s) based on <u>the highest level class relationship to the object</u>, <u>the within class resolution rule</u>, and <u>the equivalent class resolution rule</u>*." Note that the decision is based on **all three of these items**:

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[1] *See* M.P.E.P. §2142-43.

something which is not accounted for in any of the cited references. In essence, this decision becomes comprehensive in nature, as it factors in all three listed items in making an access decision. No reference accounts for such activities.

Turning to Independent Claim 25, no reference of record provides for "...*classifying that relationship path as invalid if for any element in that path the grantee of that element is the distrustee of the distrust relationship, <u>whereby the invalid relationship path prohibits access of the object(s) by any element on the path and only an owner of the object or set of objects has access to the object(s).</u>"* These important limitations are provided for in Independent Claim 25, but no reference of record includes such elements.

It is also worth noting that, even if all elements of the claims were disclosed in various prior art references, which is certainly not the case here as discussed above, the claimed invention taken as a whole still cannot be said to be obvious without some reason why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention.

The controlling case law, rules, and guidelines repeatedly warn against using an Appellant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, "The tendency to resort to 'hindsight' based upon Appellant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." M.P.E.P. § 2142.

The U.S. Supreme Court's recent decision in *KSR Int'l Co. v. Teleflex, Inc.* reiterated the requirement that Examiners provide an explanation as to why the claimed invention would have been obvious. *KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). The analysis regarding an apparent reason to combine the known elements in the fashion claimed in the patent at issue "should be made explicit." *KSR*, 127 S. Ct. at 1740-41. "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* at 1741 (internal quotations omitted).

The new examination guidelines issued by the United States Patent and Trademark Office ("PTO") in response to the *KSR* decision further emphasize the importance of an explicit, articulated reason why the claimed invention is obvious. Those guidelines state, in part, that "[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit." *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc.*, 72 Fed. Reg. 57526, 57528-29 (Oct. 10, 2007) (internal citations omitted). The guidelines further describe a number of rationales that, in the PTO's view, can support a finding of obviousness. *Id.* at 57529-34. The guidelines set forth a number of particular findings of fact that must be made and explained by the Examiner to support a finding of obviousness based on one of those rationales. *See id.*

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For at least these reasons, all of the pending claims have been shown to be allowable as they are patentable over the references of record. Notice to this effect is respectfully requested in the form of a full allowance of these claims.

V. CONCLUSION

In view of the above, and for other reasons clearly apparent, Appellant respectfully submits that the Application is in condition for allowance.

The appropriate $270.00 small entity Appeal Brief fee is being paid concurrently herewith on the Electronic Filing System (EFS) by way of credit card.

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Respectfully submitted,

PATENT CAPITAL GROUP
Attorneys for Appellant

</div>

Date: January 20, 2009   /s/ Thomas J. Frame/ _____
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VI.   APPENDIX OF CLAIM SUPPORT AND DRAWING ANALYSIS

1.   (Previously Presented) A method for regulating access to an object comprising the steps of:

for a plurality of users **[FIGURE 1, #10, #20, etc.]**, allowing each user to designate the relationship characteristics between that user and any other user;

identify one of the plurality of users as an owner of the object **[page 9-10, lines 25-4]**;

determining if a selected one of the plurality of users has access to the object by determining if the relationship characteristics on at least one path **[page 8, lines 15-19]** between the selected one of the plurality of users and the owner of the object is a trusted relationship between each of the users on that path, wherein said path includes at least one additional user beside said owner of the object and the selected one of the plurality of users, and access to the object for the additional user is granted by the selected one, and wherein the additional user defines additional relationship characteristics that grant access to additional objects being held by the additional user **[for example, see page 9, lines 8-24; page 10, 5-16; page 14, lines 4-14]**.

2.   (Original) A method for regulating access to an object as in claim 1 wherein the relationship characteristics include one or more conditions such that the relationship characteristics are valid if and only if the one or more conditions are met.

3.   (Original)   A method for regulating access to an object as in claim 1 wherein the relationship characteristics include one or more methods of determining a condition such that the relationship is valid if and only if the one or more methods of determining a condition confirm validity of the relationships characteristic.

4.   (Original)   A method for regulating access to an object as in claim 1 wherein the owner of an object may designate another user as acting on behalf of the owner.

5.   (Original)   A method for regulating access to an object as in claim 1 wherein the relationship characteristics include a trust relationship between the trusted user and the designating user.

6.   (Original)   A method for regulating access to an object as in claim 1 wherein the relationship characteristics include a trust relationship between the trusted user and the designating user, wherein the trust relationship limits the tasks the trusted user may perform.

7.   (Original)   A method for regulating access to an object as in claim 1 wherein the relationship characteristics include a trust relationship between the trusted user and the designating user, wherein the trust relationship limits the objects the trusted user may access.

8.   (Original)   A method for regulating access to an object as in claim 7 wherein the trust relationship is limited to types of objects.

9.   (Original)   A method for regulating access to an object as in claim 7 wherein the trust relationship is limited to selected of objects.

10.   (Original)   A method for regulating access to an object as in claim 1 wherein the trust relationship characteristics include a distrusted relationship between the distrusted user and the designating user.

11.   (Original)   A method for regulating access to an object as in claim 10 wherein the distrusted relationship has an intermediary scope.

12.   (Original)   A method for regulating access to an object as in claim 10 wherein the distrusted relationship has an terminal scope.

13.   (Original)   A method for regulating access to an object as in claim 1 wherein the relationship characteristics include a trust relationship between the trusted user and the designating user, wherein the trust relationship specifies a maximum number of relationships on a path.

14.   (Original)   A method for regulating access to an object as in claim 13 wherein the maximum number of relationships is one.

15.   (Previously Presented) A method for regulating access to an object, the method comprising the steps of:

identifying an object or a set of objects to which access is to be regulated **[page 9-10, lines 25-4]**;

identifying an owner **[FIGURE 1, #10, #20, etc.]** that has control of the object(s);

identifying a relationship path which would otherwise be a valid path **[page 8, lines 15-19]**;

allowing each relationship element to specify the maximum number of subsequent elements in the path; and

classifying that relationship path as invalid **[for example, see page 10, lines 17-27]** if for any element in that path the number of subsequent elements in the path exceeds the limit specified by that element such that access to the object(s) is prohibited for all relationship elements in the path and only the owner can access the object(s) **[for example, see page 9, lines 8-24; page 10, 5-16; page 14, lines 4-14]**.

16.   (Original)   A method for regulating access to an object as in claim 15 wherein the relationship path includes a plurality of relationship characteristics and at least one relationship characteristic includes one or more conditions such that the relationship characteristics are valid if and only if one or more conditions are met.

17. (Original) A method for regulating access to an object as in claim 15 wherein the relationship path includes a plurality of relationship characteristics and at least one relationship characteristic includes one or more methods of determining a condition such that the relationship is valid if and only if the one or more methods of determining a condition confirm validity of the relationships characteristic.

18. (Original) A method for regulating access to an object as in claim 15 wherein the owner of an object may designate another user as acting on behalf of the owner.

19. (Original) A method for regulating access to an object as in claim 15 wherein the relationship path includes a plurality of relationship characteristics and at least one relationship characteristics includes a trust relationship between the trusted user and the designating user, wherein the trust relationship limits the tasks the trusted user may perform.

20. (Original) A method for regulating access to an object as in claim 15 wherein the relationship path includes a plurality of relationship characteristics and at least one relationship characteristic includes a trust relationship between the trusted user and the designating user, wherein the trust relationship limits the objects the trusted user may access.

21.   (Original)   A method for regulating access to an object as in claim 20 wherein the trust relationship is limited to types of objects.

22.   (Original)   A method for regulating access to an object as in claim 20 wherein the trust relationship is limited to selected of objects.

23.   (Previously Presented) A method of resolving a conflict regarding a specified access to an object, the method comprising the steps of:

identifying a set of entities that have control of the object(s) **[page 9-10, lines 25-4; FIGURE 1, #10, #20, etc.];**

defining an event of access conflict as a condition wherein one or more entity relationship(s) would grant the specified access to the object(s) and one or more entity relationship(s) would deny the specified access to the object(s) **[page 10, lines 17-27; page 8, lines 15-19];**

defining one or more classes of relationships between the object(s) and controlling entities;

defining a hierarchy for the classes of object-entity relationships that is used to establish precedence in the event of an access conflict;

defining an equivalent class resolution rule for event(s) of access conflict wherein the controlling entity relationships for one or more relationship class to the object would grant the specified access and the controlling relationships for one more relationship class with the same level and the class relationship hierarchy would deny the specified access to the object(s);

defining a within class resolution rule for event(s) of access conflict wherein the conflict arises among multiple entities which have the same class of relationship to the object(s); and

allowing or disallowing the specified access to the object(s) based on the entity relationship(s) based on the highest level class relationship to the object, the within class resolution rule, and the equivalent class resolution rule **[for example, see page 9, lines 8-24; page 10, 5-16; page 14, lines 4-14].**

24.   Cancelled

25.   (Previously Presented) A method of regulating access to an object, the method comprising the steps of:

identifying an object or a set of objects to which access is to be regulated **[page 9-10, lines 25-4; FIGURE 1, #10, #20, etc.]**;

identifying an entity that has control of the object(s);

identifying a relationship path **[page 8, lines 15-19]** which would otherwise be a valid path;

defining a distrust relationship as the designation of a distrustee as distrusted by a distrustor;

specifying for each distrust relationship a set of zero or more conditions and/or a set of zero or more methods of determining a condition such that the relationship is valid if and only if the said set of condition is (are) met and/or the method(s) of determining a condition confirm(s) validity; and

classifying that relationship path as invalid **[for example, see page 10, lines 17-27]** if for any element in that path the grantee of that element is the distrustee of the distrust relationship, whereby an invalid relationship path prohibits access of the object(s) by any element on the path and only an owner of the object or set of objects has access to the object(s) **[for example, see page 9, lines 8-24; page 10, 5-16; page 14, lines 4-14]**.

VII. EVIDENCE APPENDIX

Appellant is not submitting any evidence at this time.